

Stuart G. Gross (SBN 251019)
 Ross A. Middlemiss (SBN 323737)
 Travis H.A. Smith (SBN 331305)
GROSS KLEIN PC
 The Embarcadero
 Pier 9, Suite 100
 San Francisco, CA 94111
 (415) 671-4628

Attorneys for Plaintiffs and the Proposed Classes
 [additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRAND LITTLE and ROBIN BURNS,
 Individually and on Behalf of All Others Similarly
 Situated,

Plaintiffs,
 v.

**PACIFIC SEAFOOD PROCUREMENT, LLC;
 PACIFIC SEAFOOD PROCESSING, LLC;
 PACIFIC SEAFOOD FLEET, LLC; PACIFIC
 SEAFOOD DISTRIBUTION, LLC; PACIFIC
 SEAFOOD USA, LLC; DULCICH, INC.;
 PACIFIC SEAFOOD – EUREKA, LLC;
 PACIFIC SEAFOOD – CHARLESTON, LLC;
 PACIFIC SEAFOOD – WARRENTON, LLC;
 PACIFIC SEAFOOD – NEWPORT, LLC;
 PACIFIC SEAFOOD – BROOKINGS, LLC;
 PACIFIC SEAFOOD – WESTPORT, LLC;
 PACIFIC SURIMI – NEWPORT LLC; BLUE
 RIVER SEAFOOD, INC.; SAFE COAST
 SEAFOODS, LLC; SAFE COAST SEAFOODS
 WASHINGTON, LLC; OCEAN GOLD
 SEAFOODS, INC.; NOR-CAL SEAFOOD,
 INC.; KEVIN LEE; AMERICAN SEAFOOD
 EXP, INC.; CALIFORNIA SHELLFISH
 COMPANY, INC.; ROBERT BUGATTO
 ENTERPRISES, INC.; ALASKA ICE
 SEAFOODS, INC.; LONG FISHERIES, INC.;
 CAITO FISHERIES, INC.; CAITO
 FISHERIES, LLC; SOUTHWIND FOODS,
 LLC; FISHERMEN’S CATCH, INC.;
 GLOBAL QUALITY FOODS, INC.; GLOBAL
 QUALITY SEAFOOD LLC; OCEAN KING**

Case No. 3:23-cv-01098-AGT

**PLAINTIFFS’ NOTICE OF
 MOTION AND MOTION FOR AN
 ORDER ALLOWING NON-
 PARTIES OZZIE GREGORIO
 AND TRIPLE G SEAFOOD
 CORPORATION TO RECOVER
 FEES AND COSTS INCURRED
 COMPLYING WITH
 DEFENDANTS’ DOCUMENT
 SUBPOENAS AND OTHER
 DISCOVERY IN THIS ACTION**

Date: July 11, 2025
 Time: 10:00 a.m.
 Courtroom: A, 15th Floor
 Judge: Alex G. Tse

GROSS KLEIN PC
 THE EMBARCADERO
 PIER 9, SUITE 100
 SAN FRANCISCO, CA 94111

**FISH INC.; SOUTH BEND PRODUCTS LLC;
SWANES SEAFOOD HOLDING COMPANY
LLC; BORNSTEIN SEAFOODS, INC.;
ASTORIA PACIFIC SEAFOODS, LLC; and
DOES 29-60,**

Defendants.

GROSS KLEIN PC
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

GROSS KLEIN PC
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

TABLE OF CONTENTS

NOTICE OF MOTION	1
RELIEF SOUGHT	1
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. BACKGROUND	2
A. Ozzie Gregorio: Confidential Buyer Informant #1 and the Source of Several Significant Allegations in the SAC	2
B. Procedural History	3
III. LEGAL STANDARD.....	2
IV. ARGUMENT	3
A. Mr. Gregorio Will Incur Expenses in Complying with Defendants’ Subpoenas and Other Discovery in this Action	3
B. These Expenses Will Be Significant.....	3
C. Plaintiffs Will Withdraw Their Motion if Defendants Stipulate to a Fee-Shifting Agreement.....	4
CONCLUSION	4

TABLE OF AUTHORITIES

CASES

Gamefam, Inc. v. WowWee Grp. Ltd., 2024 U.S. Dist. LEXIS 47464 (N.D. Cal. Mar. 18, 2024)..... 3

Legal Voice v. Stormans Inc., 738 F.3d 1178 (9th Cir. 2013) 2, 3, 4

Spears v. First Am. eAppraiseIT, 2014 U.S. Dist. LEXIS 169944 (N.D. Cal. Dec. 8, 2014) 3

United States v. McGraw-Hill Companies, Inc., 302 F.R.D. 532 (C.D. Cal. 2014) 3, 4

Williams v. City of Dallas, 178 F.R.D. 103 (N.D. Tex. 1998)..... 4

RULES

Fed. R. Civ. Pro. 45(d)(1) 2

Fed. R. Civ. Pro. 45(d)(2)(B)(ii) 2

GROSS KLEIN PC
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

NOTICE OF MOTION

PLEASE TAKE NOTICE that on July 11, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, at 450 Golden Gate Avenue, San Francisco, CA 94102, Courtroom A, 15th Floor, before the Honorable Alex G. Tse, Plaintiffs will, and hereby do, move the Court for an order allowing non-parties Ozzie Gregorio and Triple G Seafood Corporation to recover attorneys' fees and costs incurred in complying with Defendants' document subpoenas and other discovery in this action pursuant to Rule 45 of the Federal Rules of Civil Procedure. This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Stuart G. Gross ("Gross Dec.") filed herewith and inclusive of the exhibits thereto, the materials on file in this action, and any oral argument presented to the Court at the time of hearing.

RELIEF SOUGHT

Plaintiffs seek an order permitting non-party Ozzie Gregorio and his company Triple G Seafood Corporation ("Triple G") to recover, from Plaintiffs in the first instance, attorneys' fees and costs that they incur in compliance with Defendants' document subpoenas ("Defendants' Subpoenas") and other discovery in this action.¹

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiffs respectfully move this Court to enter an Order pursuant to Federal Rule of Civil Procedure 45 that non-parties Ozzie Gregorio and Triple G may recover the attorneys' fees and costs they incur in complying with Defendants' Subpoenas and other discovery in this action, in the first instance, from Plaintiffs. Mr. Gregorio is "Confidential Fish Buyer Informant #1," whom Defendants pressured to join their pricing cartel. Information from him formed the basis of many allegations in the operative Second Amended Complaint ("SAC"). Because of this, Mr. Gregorio and his fish-buying company Triple G will be called on to provide extraordinary participation in this litigation's discovery process, incurring very significant expense thereby. Indeed, each of the

¹ Plaintiffs reserve their rights to later seek reimbursement from Defendants for some are all of the attorneys' fees and costs paid by Plaintiffs pursuant to such an order.

GROSS KLEIN PC
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

Defendants' Subpoenas contains 120 separate requests, inclusive of subparts. Responding to Defendants Subpoenas alone, without considering the need to comply with other discovery issued in this case, will require that Mr. Gregorio and Triple G hire counsel to whom they will incur very substantial attorneys' fees and costs.

However, it appears that Mr. Gregorio and Triple G may not be able to retain counsel to represent them in complying with Defendants' Subpoenas and other discovery in this action unless the Court enters an order that establishes their entitlement to recover attorneys' fees and costs incurred in doing so. Plaintiffs do not object to paying those attorneys' fees and costs, in the first instance (and subject to their right to later seek reimbursement of some of all the amount paid from Defendants), and believe that it is important that Mr. Gregorio and Triple G be represented both for the equitable reasons that animate the fee shifting provisions of Rule 45 and for the orderly management of this action. Accordingly, Plaintiffs respectfully request that the Court issue an order entitling Mr. Gregorio and Triple G to recover from Plaintiffs, in the first instance, attorneys' fees and costs that they incur in compliance with Defendants' Subpoenas and other discovery in this action.

II. BACKGROUND

A. Ozzie Gregorio: Confidential Buyer Informant #1 and the Source of Several Significant Allegations in the SAC

Mr. Gregorio is the individual known as "Confidential Buyer Informant #1," and the SAC contains extensive allegations based on information he provided. Gross Dec., ¶ 2.

This includes, without limitation, numerous instances in which Mr. Gregorio was told by various representatives of Defendants what ex-vessel price they were paying and pressured him to lower his price to that level, with both threats and promised benefits. *See, e.g.*, Dkt. 255, ¶¶ 221-225, 298-99, 302-03, 306-13, 318-19, 321-27. The SAC further details how Mr. Gregorio and Triple G's crab-buying business were targeted by the Defendants with various punishing actions when they refused to toe the line. *See, e.g., id.*, ¶¶ 303-05, 314-17, 320, 328-60.

In addition, the SAC details other important events and communications of which Mr. Gregorio was a witness. These include, without limitation, John Caito's communication to Mr.

Gregorio that he and the other owners of Caito Fisheries sold their fish-buying business “to Southwind ... in reaction to the filing of the instant case.” *Id.* ¶ 93. Mr. Gregorio was also one of those in the room in November 2023 when representatives of “Pacific Seafood (Dan Obrador and Mike Moody), Bornstein (Mike Shirley), Fathom, Hallmark (Scott Adams) and Safe Coast [where they] expressed a uniform position they did not want to offer crabbers more than \$2.50/lb. as an opening ex-vessel price” because “there was no demand” for ex-vessel Dungeness crab. *Id.* ¶ 226-27. And circa August 7, 2024, John Caito contacted Mr. Gregorio to inform him that “Caito Fisheries, and by extension Southwind, had an agreement with Pacific Seafood whereby Ocean Gold would receive a significant portion of the Dungeness crab that Caito Fisheries lands in California in the upcoming seasons, just as in 2024. In exchange ... Pacific Seafood would give Caito Fisheries increased control over the California groundfish market, via near-exclusive access to the volume that Pacific Seafood now controls.” *Id.* ¶ 293.

B. Procedural History

On April 11, 2025, Defendants served on Plaintiffs notice of document subpoenas to Mr. Gregorio and Triple G, which were superseded by amended subpoenas, i.e., Defendants’ Subpoenas, notice of which was served on Plaintiffs on May 20, 2025. Declaration of Stuart G. Gross (“Gross Dec.”), ¶ 3. Plaintiffs understand that Defendants’ Subpoenas were served on Mr. Gregorio and Triple G on or around May 29, 2025. *Id.*, ¶ 4. Defendants Subpoenas have a return date of June 13, 2025, but Defendants have stipulated to an extension of that to fourteen days after the Court resolves the instant motion. *See* Dkt. 354.

On April 23, 2025, for preservation and other purposes, Plaintiffs served on Defendants notice of subpoenas to Mr. Gregorio and Triple G that were effectively identical in substance to the subpoenas for which Defendants provided notice on April 11, 2025. Gross Dec., ¶ 5. Plaintiffs have not yet served the subpoenas on Mr. Gregorio or Triple G. *Id.*, ¶ 6.

Defendants’ Subpoenas contain 34 numbered requests, with 86 separate subparts. For example, Request No. 14 alone has 25 subparts seeking:

All Documents related to any of the following individuals, and/or the owners, employees, agents of such individuals:

GROSS KLEIN PC
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

- | | |
|--------------------------------------|---------------------------------|
| (1) Joe Cincotta | (14) George Lay |
| (2) Brett Hester | (15) Kevin Lee |
| (3) Dan Obrador | (16) Kevin Zheng |
| (4) John Moody | (17) Max Boland |
| (5) Mike Moody | (18) John Caito |
| (6) Delbert Stauffer | (19) Scott Adams |
| (7) Frank Dulcich | (20) Crystal Adams |
| (8) The sender of the email | (21) Eugene Bugatto |
| referred to in Paragraphs 366-367 of | (22) Michael Bugatto |
| the Second Amended Complaint | (23) Peter Nguyen |
| (9) Dan Obradovich | (24) Ozzie Gregorio's uncle, as |
| (10) Rick Harris | identified and referenced in |
| (11) George Borstein | Paragraph 306 of the Second |
| (12) Mike Shirley | Amended Complaint. |
| (13) Nick Moreno | (25) Bill Carvalho |

Gross Dec., Ex. A, at pdf pp. 14-15.

Defendants' Subpoenas, furthermore, require that "[d]ocuments which are maintained in electronic form in the ordinary course of business shall be produced in such electronic forms, i.e., in their native form, unless another agreement is reached with counsel for [Defendants], except if the information requested is contained in a database." *Id.*, Ex. A, at p. 7 (Instruction No. 10). And they define "documents" to include *inter alia* text messages and other direct messages. *Id.*, pdf p. 4 (Definition No. 8).

Thus, in order to adequately comply with Defendants' Subpoenas and other discovery in this action, Mr. Gregorio and Triple G will expend considerable time and money, and almost certainly will need the assistance of counsel and vendors; and it is Plaintiffs' understanding that neither Mr. Gregorio nor Triple G has the resources necessary to pay for such counsel's or vendor's fees. Gross Dec., ¶ 7.

On May 21, 2025, an attorney, Nicholas Connon, sent a letter to Plaintiffs' and Defendants' counsel concerning his potential representation of Mr. Gregorio in complying with Defendants' Subpoenas and other discovery in this action. Gross Dec., ¶ 8, Ex. C. In his letter, Mr. Connon indicated *inter alia* "that compliance with the subpoena will require Mr. Gregorio to consult legal counsel and obtain advice regarding compliance and various objections that he may have." *Id.* He further noted that "As a third-party witness, Rule 45 protects third-party witnesses from undue burden and expense." *Id.* He, therefore, requested that the parties agree to cover the attorneys' fees and costs incurred by Mr. Gregorio in complying with Defendants' Subpoenas and other discovery in this action and that such agreement be memorialized in an order of this Court. *Id.* Mr. Connon further indicated that a condition of his representing Mr. Gregorio in this action was that such an order be entered. *Id.*

On May 22, 2025, Plaintiffs' counsel responded to Mr. Connon's request, copying Defendants' counsel, indicating that Plaintiffs were agreeable to covering Mr. Gregorio's and Triple G's attorneys' fees and costs incurred in complying with Defendants' Subpoenas. Gross Dec., ¶ 9, Ex. D. Plaintiffs are unaware of any response by Defendants to Mr. Connon's request. *Id.*, ¶ 11.

During the May 30, 2025 further case management order conference, in response to Plaintiffs' counsel's description of the situation, the Court instructed that if a stipulation cannot be entered that addresses the situation, Plaintiffs should file the instant motion.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 45 requires that parties who issue a subpoena "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena" and empowers to court to make appropriate orders to ensure that result. Fed. R. Civ. Pro. 45(d)(1); *see also* Fed. R. Civ. Pro. 45(d)(2)(B)(ii). These provisions have been interpreted by the Ninth Circuit to "require the district court to shift a non-party's costs of compliance with a subpoena, if those costs are significant." *Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1184 (9th Cir. 2013). Thus, in determining whether to shift costs under Rule 45, "[o]nly two considerations are relevant ...: '(1) whether the subpoena imposes expenses on the non-party, and (2) whether those expenses are significant.'" *United States v. McGraw-Hill Companies, Inc.*, 302 F.R.D. 532, 536 (C.D. Cal.

2014) (quoting *Legal Voice*, 738 F.3d at 1184) (internal quotation omitted). Both requirements are readily met here.

Furthermore, costs may be shifted under Rule 45(d)(2)(B) “in the absence of a court order ‘if the requesting party is on notice that the non-party will seek reimbursement of costs.’” *See Gamefam, Inc. v. WowWee Grp. Ltd.*, 2024 U.S. Dist. LEXIS 47464, at *17 (N.D. Cal. Mar. 18, 2024) (quoting *Spears v. First Am. eAppraiseIT*, 2014 U.S. Dist. LEXIS 169944, at *9 (N.D. Cal. Dec. 8, 2014)).

IV. ARGUMENT

An order establishing Mr. Gregorio’s and Triple G’s entitlement to receive reimbursement of the attorneys’ fees and costs that they will incur in complying with Defendants Subpoena and other discovery in this action, in the first instance from Plaintiffs, is appropriate as the expense that will be imposed on them as non-parties in doing so will be significant.

A. Mr. Gregorio Will Incur Expenses in Complying with Defendants’ Subpoenas and Other Discovery in this Action

Reimbursable “expense[s]” under Rule 45 are those that are “necessary to the third party’s compliance [with the subpoena] and thus benefit the requesting party or are of assistance to the court.” *Gamefam*, 2024 U.S. Dist. LEXIS 47464, at *18 (quoting *McGraw-Hill*, 302 F.R.D. at 536). These expenses include attorneys’ fees to the extent counsel aids in complying with, but not resisting, the subpoena, including negotiations on subpoena scope, locating and collecting potentially responsive documents, assembling privilege logs, preparing and defending depositions, lost wage/salary time, preparing a fee-shifting motion, and hiring vendors to find, preserve, and review potentially responsive documents. *Id.* at *18-26.

Plaintiffs’ motion seeks precisely this: that Mr. Gregorio’s and Triple G’s legal expenses incurred in complying with Defendants’ Subpoena and other discovery in this action be reimbursed, in the first instance by Plaintiffs.

B. These Expenses Will Be Significant.

Whether an expense is “significant” depends upon “the ability of the producing non-party to bear the costs of the production.” *McGraw-Hill*, 302 F.R.D. at 536.

GROSS KLEIN PC
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

Mr. Gregorio and Triple G cannot feasibly bear the cost of complying with Defendants' Subpoenas and other discovery in this action. This was specifically represented to Plaintiffs' counsel by Mr. Gregorio, Gross Dec., ¶ 7; and it is corroborated by the fact that Mr. Connon has conditioned his retention by Mr. Gregorio on the entry of an order establishing his entitlement to reimbursement of attorneys' fees and costs by the parties, *see id.*, Ex. C. Indeed, in a related meet and confer, Mr. Connon expressed his discomfort with even appearing for Mr. Gregorio and Triple G in this action for the limited purpose of entry of a stipulation with Plaintiffs that would provide for such reimbursement. Gross Dec., ¶ 11.

These concerns of Mr. Gregorio, Triple G, and Mr. Connon are not unfounded. By Plaintiffs' estimation, the attorneys' fees and costs that Mr. Gregorio and Triple G will likely incur in complying with Defendants' Subpoenas and other discovery in this action could easily exceed \$50,000. Gross Dec., ¶ 12. By way of comparison, costs of \$20,000 have been found "significant" for a non-profit legal advocacy group. *See Legal Voice*, 738 F.3d at 1181, 85. And costs of \$9,000 have been found potentially "significant" for two attorneys. *See McGraw-Hill*, 302 F.R.D. at 536 (citing *Williams v. City of Dallas*, 178 F.R.D. 103, 113-14 (N.D. Tex. 1998)).

Accordingly, the significance factor is met here as well.

C. Plaintiffs Will Withdraw Their Motion if Defendants Stipulate to a Fee-Shifting Agreement

Because such an agreement would obviate the instant Motion, Plaintiffs will withdraw this Motion should Defendants stipulate to a fee shifting agreement with respect to subpoena compliance costs, including attorney fees, for Ozzie Gregorio and Triple G.

CONCLUSION

For the reasons discussed above, Plaintiffs respectfully move this Court to enter an order permitting Ozzie Gregorio and Triple G Seafood Corporation to recover, from Plaintiffs in the first instance, attorneys' fees and costs that they incur in compliance with Defendants' document subpoenas and other discovery in this action

GROSS KLEIN PC
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

Respectfully Submitted,

Dated: April 18, 2025

GROSS KLEIN PC

By: /s/ Stuart G. Gross

STUART G. GROSS

Stuart G. Gross (SBN 251019)
Travis H. A. Smith (SBN 331305)
Ross A. Middlemiss (SBN 323737)
GROSS KLEIN PC
The Embarcadero
Pier 9, Suite 100
San Francisco, CA 94111
(415) 671-4628
sgross@grosskleinlaw.com
tsmith@grosskleinlaw.com
rmiddlemiss@grosskleinlaw.com

Matthew W. Ruan (SBN 264409)
**FREED KANNER LONDON &
MILLEN LLC**
100 Tri-State International, Suite 128
Lincolnshire, IL 60069
(224) 632-4500
mruan@fklmlaw.com

Matthew S. Weiler (SBN 236052)
**SCHNEIDER WALLACE COTTRELL
KONECKY, LLP**
2000 Powell Street, Suite 1400
Emeryville, CA 94608
(415) 421-7100
mweiler@schneiderwallace.com

Steven N. Williams (SBN 175489)
STEVEN WILLIAMS LAW, P.C.
201 Spear St, Suite 1100
San Francisco, CA 94105
(415) 671-4628
swilliams@stevenwilliamslaw.com

*Counsel for Plaintiffs and the Proposed
Classes*